C.R. No. 465 of 1984

INTHE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.R. No. 465 of 1984
Date of decision November 21 ,2007

1. **Bijender Kumar s/o JaganNath, r/o Vill. Bhondsi, Teshil & Distt. Gurgaon.**
2. **Harvinder Singh s/o Bhoj Ram, r/o village Garhi Harsaru, Tehsil. & Distt.Gurgaon. Through their General Power of attorney Pawan Kumar s/o Dushyant Kumar, r/o Shivaji Nagar, Gurgaon.**
3. **Suresh Kumar s/o Matu Ram, r/o Shivaji Nagar, Gurgaon. (All the petitioners substituted in place of Narotam Singh and others vide order dated 21.11.2007).**

..... Petitioners

Versus

Kulbhushan Kapoor s/o Hakim Mulakh Raj, r/o Rajauri Garden,New Delhi.

..... Respondent

CORAM: HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. Sanjiv Bansal, Advocate
for the petitioners.

Ms. Alka Sarin, Advocate
for the respondent.

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Sham Sunder, J.

The instant revision petition was originally filed by Narotam Singh and others, against the judgment dated 27.10.1983, rendered by the Appellate Authority, Gurgaon, vide which it accepted the appeal, by setting aside the order of ejectment dated 11.10.1982, passed by the Rent Controller, Gurgaon. During the pendency of the revision petition, they sold the demised premises, in favour of the applicants, namely Bijender Kumar son of late Sh. Jagan Nath, Harvinder Singh son of late Bhoj Raj and Suresh Kumar son of Matu Ram. They were accordingly substituted, in place of

the original revision petitioners vide separate order passed today, in the civil miscellaneous petition.

2. Dr. Kulbhushan Kapoor was inducted as a tenant in the demised premises, on 19.6.1974, as fully described in the ejectment petition, at a monthly rental of Rs.300/- (Rs.260/- as rent + Rs.40/- as tax etc.) by Narotam Singh and others original landlords. The ejectment of the tenant, was sought, on the grounds that he had been in arrears of rent since 19.6.1974; that he had changed the user of the demised premises, from residential, to non residential; that he committed such acts, as materially impaired the value and utility of the demised premises; that the landlords required the demised premises for personal bona fide necessity; and that the tenant was guilty of such acts and conduct, as amounted to nuisance, to the occupiers of the buildings, in the neighbourhood. On the refusal of the tenant-respondent, to vacate the demised premises, an ejectment application was filed.

3. The respondent-tenant in, the written statement, took up various objections, and contested the petition. It was pleaded that no notice under Section 106 of the Transfer and Property Act, was served, upon him, before filing the petition and, as such, the same was not maintainable. It was denied that the demised premises were residential. It was stated that previously Land Mortgage Cooperative Bank, was being run, on the ground floor of the demised premises, whereas the first floor was being used for the residence of the Manager. It was further stated that the respondent being a medical practitioner, and had opened a clinic, on the ground floor, whereas, he was residing in Rajauri Garden, New Delhi. It was further

stated that the tenant applied for a commercial electricity meter, after obtaining 'No Obection Certificate' from Dwarkadheesh, one of the original landlords . It was further stated that Gajraj Singh was running his office as an Architect, on the first floor. It was further stated that the demised premises were let out to the respondent for non-residential purpose i.e. for running his clinic, as he is a doctor. It was further stated that the demised premises were taken on rent, from Bhola Singh, father of the original landlords, and the rent was paid to him till 19.11.1977. After that date, said Bhola Singh refused to receive the rent, tendered or remitted by postal money order, by the respondent, as he insisted to enhance the same. The respondent, ultimately, moved an application under Section 6-A of the Harayana Urban (Control of Rent and Eviction) Act, and paid/deposited the rent up to 19.6.1978. It was denied, that the respondent committed such acts, as materially impaired the value and utility of the demised premises. It was further stated that only wooden planks had been fixed, in the verandah. It was denied that any pucca wall had been constructed to convert the verandah into a room. It was further stated that the water tank was installed with the consent of Bhola Singh, father of one of the original landlords. It was further stated that the verandah was not converted into a room, by the respondent, nor any window and door therein had been opened by him. On the other hand, it was stated that this portion,was in the same condition, in which it was at the time inception of tenancy. It was denied that any hole was made, in the wall, by the respondent. It was further admitted that pucca floor was laid by the respondent. Water tank and the pipes for draining out the water, through bathroom, kitchen etc. were also laid by the respondent, with the consent of the original landlords

through their father Bhola Singh, for the convenient use of the demised premises. The remaining averments, were specifically denied being wrong.

4. In the replication, filed by the petitioners, they reasserted all the averments, contained in the ejectment petition, and controverted those, contained in the written statement. On the pleadings of the parties, the following issue was struck :-

> *"1. Whether the respondent is liable to be ejected on the grounds mentioned in para No.2 (a) to 2(e) of the petition?*
>
> *2. Relief."*

5. After hearing the learned counsel for the parties, and, on going through the evidence, on record, the Court of the Rent Controller, vide judgment dated 11.10.1982 came to the conclusion, that the arrears of rent from 20.11.1977 to May, 1978 had not been paid by the tenant, to the landlords, and, as such, he was liable to be ejected, from the demised premises. It was further held by the Rent Controller, that the remaining grounds, for ejectment, were not proved.

6. Feeling aggrieved, against the judgment dated 11.10.1982 of the Rent Controller, an appeal was preferred. During the pendency of the appeal, before the Appellate Authority, the report of the Rent Controller was sought, and received. Ultimately, the Appellate Authority set aside the order dated 11.10.1982 of the Rent Controller, vide judgment dated 27.10.1983, and ordered the dismissal of the ejectment application.

7. Feeling aggrieved, against the judgment dated 27.10.1983 of the Appellate Authority, Gurgaon, the instant revision petition was filed by the landlord-petitioners.

8. I have heard the counsel for the parties, and have carefully perused the record.

9. Learned counsel for the respondents, vehemently contended that the Appellate Authority, was wrong, in coming to the conclusion that the arrears of rent from 20.11.1978 to 19.6.1978, had been paid by the tenant, before the first date of hearing. He further contended that the landlords filed the ejectment application on 7.6.1978, whereas, the tenant deposited an amount of Rs.2100/- on 15.6.1978, for the period afore-mentioned, by moving an application on 9.6.1978. He further contended that the Rent Controller assessed the interest and costs, but the tenant, did not tender the same. He further contended that even interest, on the amount of Rs.2100/-, as arrears of rent, from November, 1977 to 19.6. 1978 had not been paid, by the tenant, and, as such, it could not be said that he made a valid tender, on the first date of hearing. He further contended that the finding of the Appellate Authority on this issue was, thus, wrong, whereas the Rent Controller rightly held that the tenant was liable to ejectment, on this ground. He further contended that the subsequent vendees, during the pendency of lis, who were substituted in place of the original landlords, have locus standi to pursue the petition, on all the grounds. It was further contended by the learned Counsel for the revision petitioners, that it was proved from the evidence, on record, that the tenant committed such acts, as materially impaired the value and utility of the premises, but the Courts below were wrong, in holding otherwise. He further contended that once the revision petition, was filed, the findings recorded by the Appellate Court, and the Rent Controller, on all the issues, became the subject matter thereof, and the revision petitioners, were

entitled to support the grounds of ejectment, decision whereon, was rendered against them. He further contended that the judgment of the Appellate Authority is illegal and perverse, and liable to be set aside.

10. On the contrary, the learned Counsel for the respondent, submitted that the substituted revision petitioners, have no locus standi, whatsoever, to pursue the revision petition, as they could not seek ejectment of the tenant, on the ground of non-payment of arrears of rent, or non-making of valid tender, as there was no assignment of arrears of rent, in their favour, by the original landlords, vide the sale deeds, through which they, ultimately, purchased the demised premises. It was further contended by her, that the findings of the Appellate Authority, are based on correct appreciation of evidence, and law, on the point, and deserve to be upheld.

11. After perusing the judgments of the Courts below, and, on going through the evidence, on record, I am of the considered opinion, that the judgment of the Appellate Authority, does not suffer from any illegality or perversity. The demised premises were sold by the landlords/owners, in favour of the substituted revision petitioners, vide sale deeds, dated 22.8.1997,12.9.1997 and 23.10.1997, copies whereof have been placed, on record. The perusal of the copies of the sale deeds, clearly goes to reveal that the arrears of rent, were not assigned, in favour of the subsequent vendees, by the original landlords/owners. In these circumstances, in my opinion, the subsequent vendees/revision petitioners, could not pursue the revision petition, on the ground of non-payment of arrears of rent or on account of the alleged invalid tender of rent. **In Hari Krishan Versus Smt. Krishna Mohini 1990(2) RCR 643**, a Division Bench Authority, of this Court, it was held that if, there was no assignment

of arrears of rent, in favour of the vendee, the tenant could not be ejected, on the ground of non-payment of arrears of rent. Similar principle of law was laid down **in Sheikh Noor and another Versus Sheikh G.S. Ibrahim (dead) by LRs (2003) 7 Supreme Court cases 321**. The principle of law, laid down, in these authorities, is fully applicable to the facts of this case. No authority, laying down the contrary principle of law, was cited or produced by the Counsel for the revision petitioners. Under these circumstances, the contention of the Counsel for the respondent, that the revision-petitioners, being subsequent vendees, having not been assigned, the arrears of rent, by the original landlords, could not seek ejectment of the tenant, on the ground of non-payment of arrears of rent, and, thus, have no locus standi to pursue the revision petition, on this ground, being correct is accepted.

12. Even otherwise, even if it assumed, that the revision peteitioners/subsequent vendees, were competent to seek ejectment, on the ground of non-payment of arrears of rent, in my opinion, the Appellate Authority, was right in holding that the rent prior to 20.11.1977, had already been paid, before the filing of the ejectment petition, to Bhola Singh, father of the original landlords. In case, the rent prior to 20.11.1977, had not been paid to Bhola Singh, father of the original landlords, they could easily produce him, to rebut this factum. However, they failed to produce him and, as such an adverse inference could be drawn, against them, that had they produced Bhola Singh, as a witness, he would not have supported their case that rent prior to 20.11.1977, had not been paid by the tenant before the filing of the ejectment petition on 7.6.1978. Thus, only the rent from 20.11.1977 to April 1978, was due to the landlords, and

payable by the tenant on the date of filing the ejectment application. However, the rent from 20.11.1977 to 19.6.1978 to the tune of Rs.2100/- was deposited in favour of the landlords on 15.6.1978 by the tenant, though the notice of the ejectment application had been issued, for the first time, to the tenant from 8.6.1978 for 27.7.1978. The Rent Controller, as envisaged by the provisions of Section 13(2) of the Haryana Urban (Control of Rent and Eviction) Act, had not performed his duty, by assessing the arrears of rent, the costs and interest. In these circumstances, the tenant was not liable to pay/tender the rent. Even then, the tenant deposited the rent from 20.11.1977 to 19.6.1978 on 15.6.1978. Even if, it is taken that no interest was paid by the tenant, on the amount of Rs.2100/-, it may be stated here that the rent for two months, which was paid in excess, by the tenant, could be adjusted, towards the amount, due on account of interest, at the rate of 8% per annum, on the said amount, which was far less, than the amount tendered in excess. Under these circumstances, it could be said that the rent deposited by the tenant from 20.11.1977 to 19.6.1978, could be said to constitute a legal and valid tender.

13. The next contention of the Counsel for the petitioners that the tender was not made, on the first date of hearing is also devoid of merit. The contention of the counsel for the petitioners that there was no dispute between the parties with regard to the rate of rent and the period for which the rent was claimed and, as such, the tenant was required to deposit the arrears of rent, immediately on appearance, in the Court of the Rent Controller is also not wholly correct. There was dispute, between the parties, with regard to the period, for which the arrears of rent had been claimed. According to the tenant, he had already paid the entire rent,

before the filing of the petition. Even otherwise, the tenant deposited the rent for the aforesaid period on 15.6.1978, i.e. much before the first date of hearing, which could be said to be 18.11.1978, when the issues were struck, though, he appeared in the ejectment application for the first time on 27.7.1978. The contention of the counsel for the petitioners is, thus, rejected. The findings of the Appellate Authority, on this issue being correct are affirmed.

14. Coming to the ground of change of user of the demised premises, in my opinion, the Appellate Authority, as also the Rent Controller were right in returning the finding, that there was no change of user of the demised premises. Reliance was placed by the landlords on Ex.A-1, the rent receipt, allegedly signed by Dr. Kulbhushan Kapoor dated 19.5.1974, to prove the factum that the demised premises were residential and taken on rent by the respondent for residential purpose. The respondent denied his signatures on the same. Som Nath Aggarwal, PW-3, was examined as Finger Prints expert, by the landlords, who deposed that the signatures on Ex.A1 were of Dr. Kulbhushan Kapoor-tenant, whereas, Veer Kumar Sakhuja, handwriting and Finger Prints Expert, examined by the respondent, deposed that the same were not his signatures. This document was allegedly executed, in the presence of Mr. R.L.Bhardwaj, Advocate, and purportedly bear his signatures also. However, the landlords failed to produce him as a witness, to prove that actually this document was executed by Kulbhushan Kapoor, by appending his signatures, in a sound state of mind. R.L. Bhardwaj, Advocate, was never summoned as a witness. The science, with regard to the identification of hand-writing and signatures, is not perfect and conclusive. Contradictory statements of the

hand-writing experts, one examined by the landlords, and the other examined by the tenant were rightly not relied upon by the Courts. The Courts below were right in discarding this document. On the other hand Ex.RW-2/1 is the application, which was submitted by the respondent, to the Haryana State Electricity Board, vide which he sought commercial electricity connection, in the demised premises. No Objection Certificate, on the same, was given by Dwarkadheesh, one of the original landlords. Similarly, another application RW/2 was submitted by the tenant respondent, to the Haryana State Electricity Board, which also contains 'No Objection Certificate' from Dwarkadheesh. Dwarkadheesh never denied his signatures, on the documents. On the other hand, the case of the landlords was that the signatures of Dwarkadheesh were obtained, under fraudulent misrepresentation. Not only this, Surjit Kawatra, RW-4 , Ram Sarup, RW-6, Ram Sarup Goswami, RW-7 and Pishori Lal-RW-9, in clear-cut terms, deposed that the premises are situated in a commercial area. There are shops , offices etc. near the said premises. Earlier, the demised premises were on rent with the Land Mortgage Bank. Mohinder Singh, RW-3, and Jagdish Chander-RW-9, in their statements, stated that the Land Mortgage Bank was located earlier in the building. This fact was not specifially denied by the landlords. Narotam Singh, one of the original landlords, when appeared as, AW-6, could not deny that Land Mortgage Bank, was a tenant, in the demised premises earlier. He, on the other hand, stated in his cross examination that he did not know the period of tenancy of the Land Mortgage Bank, in the demised premises, nor he could say it was for ten years or not. He further stated that he could not recollect if the rent being paid by the said tenant was at the rate of Rs.125/- per month. In

case, the building was not earlier in possession of the Land Mortgage Bank as a tenant, then he could deny the same. The mere fact that he could not deny, in itself, goes to prove that earlier this building was on rent with the Land Mortgage Bank, for commercial purposes. Even Gajraj-PW-2, stated that he had been working as a private Architect, for the last the ten years, prior to 15.2.1979, in one of the portions of the demised premises. The respondent was/is residing in Rajauri Garden, New Delhi. It was, therefore, evident that he took the demised premises, for the purpose of running his clinic, as a private practitioner. Had he taken the demised premises, for his residence, then he must have his clinic, somewhere, in Gurgaon. The Courts below were thus, right in coming to the conclusion that the demised premises were taken on rent for non-residential purposes, and there was no change of user by the tenant. The findings of the Appellate Authority, on this issue being correct are affirmed.

15. The next ground, on which the ejectment was sought, was that the tenant committed such acts, as materially impaired the value and utility of the same. No site plan, got approved, from the Municipal Council, at the time of constructing the demised premises, was produced, on record, to show, as to which construction was, in existence therein, originally, and which construction was allegedly made therein, after it was taken on rent. Ex. AW-6/1 and AW6/2 are the two site plans, produced by the landlords, on record, which were got prepared, from private draftsmen. These site plans were of no avail to depict, as to which construction was originally raised. Why the site plans, which were got approved by the landlords, from the Municipal Council, at the time of raising construction of the demised premises, and other portions of the building, were not

produced, by them, is not known. An adverse inference, could thus be drawn that had those site plans been produced, the same would not have proved the version of the landlords, to the effect, that the tenant committed such acts, as materially impaired the value and utility of the demised premises. Even, no expert witness was examined, by the landlords, to prove the alleged construction, made by the tenant, in the demised premises. The tenant admitted that the wooden partitions were made by him. The construction of wooden partitions, was for the convenient use of the demised premises. Similarly, laying of pipes for draining the water, could also be said to be for the convenient user of the demised premises, by the tenant. Kulbhushan Kapoor, when appeared as his own witness, denied the construction of any wall and opening of door, in the verandah, so as to convert it into a room. On the other hand, he stated that the demised premises were in the same condition, as was prevalent at the time of creation of tenancy. In their statements Lakshman, PW-1, who had allegedly white-washed the demised premises and Gajraj Singh, PW-2, another tenant, in a portion of the demised premises, stated that the tenant had converted the verandah into a room. Their statements were rightly disbelieved by the Courts below, as they were found to be highly interested, in the landlords. Similarly, the statement of Narotam Singh, one of the landlords, being self serving, without corroboration, through any documentary evidence, was hardly of any consequence. Jagdish Chander, Clerk, Land Development Bank, Gurgaon, RW-9, stated that the office of the Manager was pucca. Mohinder Singh, RW-3, who was a Director of the Land Mortgage Bank, which was a tenant in the demised premises, earlier

to the creation of tenancy, in favour of the respondent, stated that a room at point-L in the site plan Ex. AW1/6 was being used as office of the Manager. There were two doors for having access to the office of the Manager. Those are at points Q and Q1 in Ex.AW6/1. They further stated that there was a window at point P-1 in Ex. AW6/1. It was this portion, which according to the landlords, was verandah and was allegedly converted into a room, by the tenant. From the statements of Mohinder Singh, RW-3 and Jagdish Chander-RW-10, it was proved that the room was in existence, much earlier to the creation of tenancy, in favour of the tenant. The Appellate Authority and the Rent Controller were, thus, right in coming to the conclusion, that the respondents did not commit such acts, as materially impaired the value and utility of the demised premises and, as such, were not liable to ejectment on this ground. The findings of the Appellate Authority on this issue, being correct are affirmed.

16. No doubt, as per the latest pronouncement of the Apex Court, even the non-residential premises, could be got vacated, by the landlords, for their personal bona fide necessity. However, it may by stated here, that the original landlords, who sought ejectment of the respondent from the demised premises, on the ground of personal bona fide necessity have already sold the same, in favour of the present revision petitioners. This ground, therefore, no longer survives.

17. The judgment of the Appellate Court, does not suffer from any illegality, perversity or infirmity. Therefore, there is no scope for interference, with the judgment of the Appellate Authority. The same is

accordingly upheld.

18. In view of the reasons recorded hereinbefore, the revision petition, must fail, and the same is dismissed with costs.

November 21, 2007 **(SHAM SUNDER)**
archana **JUDGE**